

Served: January 24, 1992

NTSB Order No. EA-3475

**UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.**

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 8th day of January, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

SE-9665

GENTRY WYATT,

Respondent.

OPINION AND ORDER

The Administrator and the respondent have both appealed from the oral initial decision Administrative Law Judge John E. Faulk issued in this proceeding on July 13, 1989, at the conclusion of an evidentiary hearing.¹ By that decision the law judge affirmed in part an order of the Administrator suspending respondent's airframe mechanic certificate. The order alleged that respondent violated sections 43.13(a) and (b) of the Federal Aviation Regulations ("FAR") by performing

¹An excerpt from the hearing transcript containing the initial decision is attached.

maintenance on an aircraft which was not in compliance with the manufacturer's maintenance manual, and which resulted in the aircraft not being returned to a condition at least equal to its original or properly altered condition.² The law judge sustained only that portion of the order which alleged a violation of FAR section 43.13 (b), and he modified the sanction from a 30-day suspension to a 15-day suspension.

The Administrator asserts on appeal that the law judge erred in finding that respondent did not violate FAR section 43.13(a), and he asks that the Board affirm the order in its entirety. Respondent argues that the law judge's ruling affirming the Section 43.13(b) violation was erroneous or, in the alternative, that any violation he may have committed was

²FAR sections 43.13(a) and (b) provide as follows:

"§43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness)...."

merely technical and does not warrant a suspension of his certificate. Both parties have filed briefs in reply.

Upon consideration of the briefs of the parties and of the entire record, the Board has determined that safety in air commerce or air transportation and the public interest do not require the affirmation of the Administrator's order. For the reasons set forth hereinafter, the Board will deny the Administrator's appeal and grant the respondent's appeal.

The facts underlying the allegations contained in the complaint are essentially not in dispute. On the day in question the captain of the subject aircraft, a Boeing 727 operated by Braniff Airlines, was adjusting his seat before takeoff.³ The lever which controls the height of the pilot's seat broke off in his hand. The captain called maintenance, and respondent, a maintenance supervisor for Braniff and Northeastern Airlines for 33 years, responded to the call. Upon examination of the broken lever respondent determined that it should be replaced, but after making a call to the maintenance controller he learned that he could not procure a replacement lever that day. Respondent then lay down on the floor of the cockpit, took a screwdriver and inserted it into the seat's shaft, pressing down on the mechanism while the captain took his weight off the seat. The captain advised respondent when the height of the seat was satisfactory, and

³The passengers were already onboard the aircraft.

respondent insured that the seat was locked and stable.⁴ Respondent then checked all of the other levers to insure that they were operational.⁵ Respondent returned the aircraft to service, noting in the aircraft's maintenance log that he had adjusted the seat as needed, and that a new seat had been ordered. The broken seat was replaced the next day. During the interim, the aircraft was operated for eight more flights, with one change of flight crew. The record shows that when the new captain arrived onboard the aircraft, respondent again used his screwdriver to adjust the height of the seat to that particular captain's satisfaction.

Turning first to the FAR section 43.13(a) allegation, the Administrator's position is that because respondent's adjusting the seat's height with a screwdriver, an action which he characterizes as "jerry-rigging," was not a method of repair prescribed in the aircraft's maintenance manual, anything less than replacement of the seat lever was improper under the regulations.⁶ We disagree. The overhaul manual

⁴According to the testimony of both captains who operated the aircraft on the day in question, in fourteen years' of combined experience in this type of aircraft, neither of them has ever made adjustments in the height of the seat after the aircraft took off because the initial height adjustment (if one was necessary) was always adequate.

⁵There are 4 adjustment levers on the seat: fore and aft, up and down, recline, and knee rest. (TR-155).

⁶Not briefed or raised by either party is whether respondent's adjustment of the seat constituted "maintenance" under FAR section 43.13. We do not need to, and we do not, decide or address that issue here.

which was produced in this record does not specifically address what action should be taken in the event a pilot's seat handle breaks off, and it does not direct the replacement of any item for which a repair is not specifically prescribed. Moreover, the complaint alleges only that respondent's corrective action was not in compliance with the manufacturer's manual or instructions, not that his adjustment of the seat despite the broken lever was not prescribed by a manual. In any event, we agree with the law judge that the Administrator's failure to establish a manual provision with which respondent failed to comply requires dismissal of the section 43.13(a) allegation.

In response to the Administrator's allegations, respondent produced a portion of the Braniff General Maintenance Manual (Exhibit R-1) which provides, in pertinent part:

C. Items related to airworthiness involving cracks, dents, fluid leaks, etc., will be checked....The items may be deferred if within the limits published in the Maintenance Manual, Structural Repair Manual, General Maintenance Manual, Engine Standard Practice Manual, or, if the item is of a minor nature and not addressed in the manuals, within the use of good judgement, per Paragraph D below.

D. Where Braniff manuals do not address the condition, supervisors and/or qualified mechanics are authorized to exercise good judgement as to the requirements for producing an airworthy product or result in consideration of the significance of the item. In the exercise of good judgement, supervisors and/or qualified mechanics may designate suitable repair action or defer the item after performing appropriate checks or inspections and determining that:

1. The item is of a minor nature, unrelated to

airworthiness.

2. Designated action is not in conflict with any Braniff Manual provision....

Respondent asserts that in the absence of a specific repair prescribed in any manual and because, in his opinion, the broken lever was minor and did not affect the airworthiness of the aircraft, he properly exercised his judgment, in accordance with the Braniff General Maintenance Manual, by adjusting the seat for the pilots until a replacement was available.

We have no disagreement with the Administrator's contention that the pilot's seat is an essential component of an aircraft, and that it must be capable of functioning as the manufacturer intended it in order for the aircraft to conform to its type certificate, notwithstanding the absence of specific evidence in this record that the type certificate actually requires an operative captain's seat. As we noted in Administrator v. Doppes, NTSB Order No. EA-2123 at 6 n.6 (1985), "[i]n order to be airworthy, an aircraft (1) must conform to its type certificate...; and (2) must be in condition for safe operation.... We are also cognizant of the fact that the preamble to Braniff's Minimum Equipment List ("MEL"), requires that "all items which are related to the airworthiness of the aircraft and not included on the list are automatically required to be operative." However, we do not agree with the Administrator that because the

captain's seat is not listed on the MEL, respondent was a fortiori precluded from exercising his judgment and making what he deemed to be a suitable interim repair action.

Before so holding, however, we still must determine if the absence of the lever relates to the airworthiness of the aircraft.

In this regard, we must reject the Administrator's contention to the effect that the broken lever on the pilot's seat rendered the aircraft unairworthy. In our view, the flaw in the Administrator's position is his repeated assertion that the mechanism which enabled the seat to be raised and lowered was inoperable, when in fact there is no evidence which established that the mechanism was not operable during the eight flights in question. To the contrary, the only evidence is that the part of the captain's seat which was broken was the lever which actuated the mechanism, but that the mechanism could still be actuated.⁷ The broken lever did not prevent a pilot from using the seat as it was intended, i.e., in accordance with its type certificate data sheet.⁸ Since the seat, notwithstanding the

⁷In this regard, the Board has held that not "every scratch, dent, "pinhole" of corrosion, missing screw, or other defect, no matter how minor or where located on the aircraft, dictates the conclusion that the aircraft's design, construction, or performance has been impaired by the defect to a degree that the aircraft no longer conforms to its type certificate." Administrator v. Calavaero, Inc., NTSB Order No. EA-2321 at 6-7, order clarified EA-2362 (1986).

⁸According to respondent, all that he had to do to actuate the height adjustment mechanism was to press down on the mechanism

broken lever, was operative, the Administrator did not sustain his position which was predicated on an inoperative seat mechanism. Respondent, therefore, was not required to return the lever itself to a condition at least equal to its original or properly altered condition before returning the aircraft to service under the terms of section 43.13(b).

We find that respondent appropriately exercised his judgment, as the holder of an airframe mechanic's certificate, by adjusting the seat to the satisfaction of both pilots and insuring that the mechanism was locked and stable, before returning the aircraft to service, consistent with his employer's General Maintenance Manual. We will therefore reverse the law judge's initial decision which affirmed the violation of FAR section 43.13(b), and dismiss the Administrator's order.

inside the seat with a screwdriver or some other device. While perhaps this technique is awkward or inconvenient, there was no showing that the crew would have been unable to actuate safely the vertical adjustment of the captain's seat in the extremely unlikely event that an in-flight adjustment of the height of the seat was necessary.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and
2. Respondent's appeal is granted; and
3. The Administrator's order of suspension is dismissed.

KOLSTAD, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.